

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-4385

Appeal PA18-100

Ministry of Health

May 2, 2023

Summary: The appellant made a multi-part request to the Ministry of Health (the ministry) for records relating to immunization and proposed amendments to the *Immunization of School Pupils Act*. In responding to the request, the ministry divided the request into three separate batches. This order deals with the denial of access to records responsive to batch 3 of the request. The ministry denied access to records, in part, on the basis of the mandatory exemption in section 12(1) (Cabinet records), and the discretionary exemptions in section 13(1) (advice or recommendations), 19 (solicitor-client privilege), and 14(1)(i) (security of a system or procedure). The ministry also withheld information on the basis that it was not responsive to the appellant's request. The appellant argued that the public interest override in section 23 should apply to the withheld information and also argued that additional responsive records should exist.

In this order, the adjudicator upholds the ministry's decision in part. She finds certain information is responsive, but exempt under the claimed exemptions and the public interest override does not apply to the information that is exempt under section 13(1). She finds that other information is not exempt and orders the ministry to disclose it. She finds the ministry's search to be reasonable and dismisses that aspect of the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 12(1), 13(1), 14(1)(i), 19, and 23.

OVERVIEW:

[1] The appellant made an eight part request to the Ministry of Health (the ministry)

under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The ministry divided the request into three batches; this order addresses batch three, consisting of parts 4, 5, and 6 of her request which read as follows:

This request relates to the issue of immunization/vaccination and the Ministry of Health and other stakeholders' efforts to increase vaccination/immunization cover rates, reduce vaccine hesitancy and require those who administer immunization to provide information to the local medical officer of health.

I am interested in all records related to proposed amendments to Immunization of School Pupil Act (ISPA). Including (1) records re Bill 87 ("An Act to implement health measure and measure relating to seniors by enacting, amending or repealing various statutes") and (2) records re the former Bill 198 ("Immunization of School Pupils Amendment Act, 2016")

Format of Records: Wherever possible, I would like to receive records in electronic format.

Definition of "including" – in this letter, including means "including but not limited to."

Definition of "records" – in this letter, records mean all records, including reports, briefing notes, policy papers, presentations, recommendations, meeting notes, legal opinions, reviews, surveys, discussion papers and communication (letters, emails, messages and other correspondence).

Please provide the following:

4. For the period January 1, 2012 to April 10, 2017, all records discussing increasing vaccination/immunization rates and/or reducing vaccine hesitancy which involve vaccine/immunization stakeholders. Including records prepared by, provided by or in consultation with such stakeholder. (without limiting the generality of the request, stakeholders include medical association, manufacturers/vendors of vaccines, lobby groups and any other party or organization which has an interest – financial or otherwise – in increasing vaccination rates or which supports increasing vaccination rates.)

5. For the period of January 1, 2012 to April 10, 2017, all records of meetings (including paperless meetings) in which stakeholders (as defined in 3 above) and Ministry of Health staff participated, in which improving vaccination/immunization coverage rates, mandatory vaccination, vaccine hesitancy or reducing exemptions from vaccination were discussed. This includes a list of such meetings.

6. For the period of January 1, 2012 to April 10, 2017, all records concerning the drafting of proposed amendments to ISPA – including all drafts, proposals, versions/iterations.

Such records may involve Ontario Ministry of Health (including Ontario's Health Minister, The Deputy Health Minister, Associate Deputy Minister and other Ministry of Health public servants), Ontario Cabinet, any Ontario advisory body/board/commission dealing with vaccines/immunization/health. Ontario's Public Health, Ontario's Attorney General or Ministry of Health Legal Services Branch, the Ministry of Education and other government and non-government stakeholders.

[2] In responding to the request, the ministry asked the appellant to consider narrowing the definition of *record* provided in the request and suggested removing vaccine hesitancy from the request, as references made to vaccine hesitancy in the records is within the subject matter of increasing immunization rates. The appellant rejected this suggestion.

[3] The ministry issued a decision granting partial access to the records, withholding information under sections 12(1) (Cabinet records), 13(1) (advice or recommendations), 18(1) (economic and other interests), 19 (solicitor-client privilege) and 21(1) (personal privacy). The ministry also noted that information in the records that it identified as not responsive would not be disclosed.

[4] The ministry then partially disclosed the records in accordance with its decision, and advised that, in addition to the exemptions set out in its access decision, it would also be relying on sections 14(1)(i) (security), 17(1) (third party information) and 20 (danger to safety or health). The ministry also advised that duplicate records, records determined to be non-responsive, or records previously disclosed (the batch 2 records) had also been withheld.

[5] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC). During mediation, the appellant advised that she had not received any updates regarding the archived email records and that she was seeking access to the records identified as duplicates or not responsive. The ministry issued a revised decision disclosing some of the information previously withheld as not responsive. For the remaining information that was previously withheld as not responsive, the ministry's decision stated that this information was now being withheld under sections 12(1), 13(1), 14, 17(1), 19, 21(1) and 22(a) (information published or available to the public). The ministry also noted that access was denied to certain information that is outside of the ministry's custody or control and therefore not subject to the right of access in section 10(1) of the *Act*.

[6] Also during mediation, the ministry issued another revised decision disclosing four further records, in part. The ministry noted that these were the archived records

referred to in their earlier decision. Access to the withheld information was denied pursuant to sections 14(1)(i), 17(1)(a), and 19(a) of the *Act*.

[7] The appellant advised the mediator that she was seeking further information regarding the search conducted and the search terms used. The ministry subsequently provided the appellant with that information.

[8] The appellant advised the mediator that she wishes to pursue access to the information withheld under sections 10(1) (custody or control), 12(1), 13(1), 14(1)(i), 17(1), 18(1), 20 and 22(a) of the *Act*. The appellant also advised that she wishes to pursue access to the duplicate records. The appellant believes that the ministry failed to conduct a reasonable search for responsive records and that additional responsive records should exist. The appellant believes that the ministry narrowed the scope of her request and that the public interest override under section 23 should apply to the withheld information. The appellant also advised the mediator that the ministry's late raising of certain discretionary exemptions is also at issue.

[9] As mediation did not resolve the issues on appeal, the file was moved to the adjudication stage of the appeals process. The assigned adjudicator decided to conduct an inquiry and sought and received representations from the ministry and the appellant. Representations were shared in accordance with the IPC's *Code of Procedure*. The file was then assigned to me to continue with the adjudication of the appeal. I have reviewed the file materials and determined that I do not need to hear from the parties again before issuing my decision.

[10] In this order, I partially uphold the ministry's decision. I find that some information claimed to be non-responsive is responsive but exempt. Other information is non-responsive and in light of that fact, I do not need to consider the ministry's argument that it is outside of its custody or control. I order the ministry to disclose the records I have found not subject to the claimed exemptions. I find that the public interest override does not apply to the information that I find to be exempt under section 13(1). Lastly, I uphold the ministry's search as reasonable.

RECORDS:

[11] The records at issue are set out in the Index of Records in the appendix to this order. The records which total more than 4000 pages, consist mainly of emails and attachments.

ISSUES:

- A. Did the ministry properly identify parts of the records as non-responsive?

- B. Is the ministry permitted to late raise the discretionary exemptions at sections 14(1)(i) and 19(a)?
- C. Does the mandatory exemption at section 12(1) for Cabinet records apply to the records?
- D. Does the discretionary exemption at section 13(1) for advice and recommendations apply to the records?
- E. Does the discretionary exemption for solicitor-client privilege at section 19(a) apply to the records?
- F. Does the discretionary exemption at section 14(1)(i) (security of a system or procedure) apply to the records?
- G. Does the discretionary exemption at section 20 (danger to safety or health) apply to the record 217?
- H. Did the ministry properly exercise its discretion in claiming sections 13(1) and 19?
- I. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 13(1) exemption?
- J. Did the ministry conduct a reasonable search for responsive records?

DISCUSSION:

Issue A: Did the ministry properly identify parts of the records as non-responsive?

Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

...

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Ministry's representations

[12] The ministry claims that certain records or parts of records are not responsive to the appellant's request. Those are records 11, 13, 18, 19, 20, 21, 23, 30, 33, 34, 38, 41, 42, 44, 70, 88, 98, 114, 135, 145, 148, 159, 164, 175, 212, 215, 299, 343.

[13] The ministry submits that the scope of this batch of the appellant's request was clear and that records responsive to this batch of records fall into these three specific subject categories:

- Records concerning increasing immunization rates or reducing vaccine hesitancy that involve vaccine stakeholders;
- Records of meetings involving stakeholders and ministry staff where the subjects of improving vaccination rates, vaccine hesitancy, mandatory vaccination, or reducing exemptions from vaccination were discussed; and
- Records concerning the drafting of proposed amendments to ISPA.

[14] The ministry submits that it also contacted the appellant to further clarify her request. The ministry suggested that the appellant remove the term "vaccine hesitancy" from her request because this term is rarely used by the ministry. The ministry explains that any references to vaccine hesitancy would be found in a search for records using the phrase "ways to increase vaccination/immunization rates". However, the ministry's notes that because the appellant did not accept the ministry's suggestion, it used the term "vaccine hesitancy" in its searches. The ministry submits that it did not suggest dropping the term "vaccine hesitancy" as a way to reduce the scope of the request. Instead, the ministry's suggested the change in phrasing to focus the search using the more common phrase.

Appellant's representations

[15] The appellant submits that the ministry did not contact her to clarify the request but instead the ministry's intent was to narrow down her request by removing certain record types (emails) and removing the term *vaccine hesitancy*. The appellant notes that she rejected these suggestions.

[16] The appellant further submits that if she had agreed to the ministry's suggestion and permitted them to not use "vaccine hesitancy", this would have reduced the scope of the responsive records.

[17] The appellant notes that contrary to the ministry's assertion, *vaccine hesitancy* is a known term that is often used in studies, articles and by Public Health. The appellant submits that the ministry's attempt to exclude records relating to vaccine hesitancy was not meant to assist her and she provides a copy of a record that was disclosed to her where vaccine hesitancy is mentioned.

[18] The appellant submits that the ministry applied a literal rather than liberal interpretation of her request. The appellant provides a discussion in her representations regarding the ministry's description of her request and how this may have resulted in fewer responsive records being identified. As the appellant is also challenging the reasonableness of the ministry's search, I will set out these representations when I consider the ministry's search for records.

[19] With respect to records 11, 41 and 114, the appellant notes:

- These records came up responsive for two batches of her request and is likely responsive to at least part of her request.
- There are other records that were disclosed which discussed Ontario's response to the Auditor General's report on Immunization which were released following mediation.

Analysis and findings

[20] I have reviewed the parties' representations and the records claimed not to be responsive by the ministry. I accept the ministry's decision that the following records are not responsive to the request:

- Records 11, 41 and 114 do not reasonably relate to the appellant's request. I am mindful of the appellant's submission that records relating to the Auditor General's report were already disclosed to her and her suggestion that these records would be similar. I find that these records are not similar in nature and I find that they are not responsive. They are not responsive because they do not reasonably relate to the subject matter of the appellant's request.
- Records 18, 19, 21, 23, 30, 34, 42, 44, 145, 148, 159, 215, 255, 299, 325, 326, and 343 address a variety of topics but, even resolving any ambiguity in favour of the appellant, they do not reasonably relate to any parts of the appellant's request and as such are not responsive to it.
- Records 151 and 152 do not reasonably relate to the appellant's request and are not responsive of it. Records 151 and 152 relate to a number of subject matters that are not covered in the appellant's request.

[21] Given my conclusion about records 11, 41 and 114, I do not need to address the ministry's alternate claim that they are not in its custody or control.

[22] Alternatively, I find the following records are responsive to the appellant's request: 13, 20, 33, 38, 70, 88, 98, and 175. I find that these records reasonably relate to the appellant's request.

[23] In reaching my decision, I have considered whether the records or information would be responsive to any of the appellant's request and not just whether they would be responsive to this particular batch of records as defined by the ministry. I have taken this approach to avoid any records "falling through the cracks" of the three batches of the appellant's request. I address the issue of duplicate records below. I have also considered the approach set out in countless IPC decisions that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.¹

[24] I accept the ministry's submission that the appellant's request, not just those parts covered in this batch, was specific and clear as to the information she was seeking. The appellant was seeking particular information relating to records about vaccination hesitancy and immunization, including proposed amendments to the *ISPA*. The appellant's request also addresses the type of records she sought. I find that there was little ambiguity in determining what records would be responsive to the appellant's request.

[25] I do not accept the appellant's argument that the ministry was attempting to narrow her request in suggesting alternative wording to use in the search for responsive records. In my view, the ministry's suggestion was an indication of its knowledge of the terminology used in records and the ways to locate responsive information in its record holdings. In any event, I accept that the ministry searched for records using the term "vaccine hesitancy". The information it has withheld as non-responsive relates to matters other than "vaccine hesitancy".

[26] With respect to the records I have found that are not responsive to the appellant's request, while some of the records relate to immunization, they do not relate to any of the specific subjects that the appellant set out in her request. Further, I do not find that a broad and liberal interpretation of the appellant's request should include every ministry record relating to immunization given the specificity of the appellant's request.

[27] Accordingly, I will proceed to consider the application of the exemptions which the ministry has claimed in the alternative² for those records I have found responsive to the appellant's request.

¹ Orders P-134 and P-880.

² The ministry reserved its right to make additional representations on the application of the exemptions. That was not an option open to the ministry; it had a full opportunity to make its submissions at the relevant time during the inquiry. In any event, given the evidence in the records themselves, I found that I had sufficient information on which to base my decisions.

Issue B: Is the ministry permitted to late raise the discretionary exemptions at sections 14(1)(i) and 19(a)?

[28] The ministry acknowledges the late raising of the application of sections 14(1)(i) (security of a procedure or system) and 19(a) (solicitor-client privilege) to certain records.

[29] The *Code of Procedure* (the *Code*) provides basic procedural guidelines for parties involved in appeals before this office. Section 11 of the *Code* addresses circumstances where institutions seek to raise new discretionary exemption claims during an appeal. Section 11.01 states:

In an appeal from an access decision an institution may make a new discretionary exemption claim within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

[30] The purpose of the policy is to provide a window of opportunity for institutions to raise new discretionary exemptions without compromising the integrity of the appeals process. Where the institution had notice of the 35-day rule, no denial of natural justice was found in excluding a discretionary exemption claimed outside the 35-day period.³

[31] In determining whether to allow an institution to claim a new discretionary exemption outside the 35-day period, the adjudicator must also balance the relative prejudice to the institution and to the appellant.⁴ The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period.⁵

[32] The ministry submits that I should allow it to claim sections 14(1)(i) and 19(a)⁶ for certain specified records because if I do not allow them to claim these discretionary exemptions there would be harm to the ministry should the information claimed exempt be disclosed to the appellant.

[33] The ministry submits that its representations include detailed evidence of the significant harm that would result from disclosure of the following records should I not permit the late-raising of the discretionary exemptions:

³ *Ontario (Ministry of Consumer and Commercial Relations v. Fineberg)*, Toronto Doc. 220/95 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 1838 (C.A.). See also *Ontario Hydro v. Ontario (Information and Privacy Commissioner)* [1996] O.J. No. 1669 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 3114 (C.A.).

⁴ Order PO-1832.

⁵ Orders PO-2113 and PO-2331.

⁶ Paragraph 13 of the Ministry's initial representations, dated December 5, 2018.

- The teleconference contact information, weblinks to webinars for teleconferences, teleconference access codes and the file paths of where government documents are saved on Ontario government computers; and
- The recommendations, advice and drafts for the immunization education module.

[34] The ministry further submits that its interests will be prejudiced if it cannot rely on the solicitor-client privilege in section 19(a). The ministry submits that the prejudice to the appellant is minimal and will not result in additional delay to the appellant or compromise the adjudication process. Finally, the ministry concludes that any possible prejudice to the appellant is outweighed by the potential prejudice to the ministry.

[35] The appellant argues that I should not allow the ministry to claim additional discretionary exemptions after the deadline. The appellant submits that she was disadvantaged in the appeal process by the ministry being allowed to revise its decisions and claim new exemptions. The appellant submits that the ministry's being allowed to claim additional exemptions has resulted in a waste of her time as she would not have participated in mediation had she known that the ministry was going to claim other exemptions. Finally, the appellant argues that I should disallow the ministry's late-raising claim in order to encourage institutions to make timely and honest decisions that are respectful of appellants.

Analysis and finding

[36] Based on my review of the circumstances in this appeal and the parties' representations, I am prepared to accept the ministry's late claiming of the discretionary exemptions at section 14(1)(i) and 19(a). While I am mindful of the appellant's argument that permitting the ministry to claim additional exemptions resulted in prolonging the appeal, I find it is not borne out by the facts. The records for which the additional discretionary exemptions are being claimed were already being withheld from the appellant under other exemption claims. The late-raising of additional discretionary exemptions did not delay disclosure of the records to the appellant. Accordingly, I find that the ministry's late claim of additional discretionary exemptions did not further delay the appeal.

[37] I have also considered the significance of the solicitor-client privilege, which is a substantive right at common law, as well as the interests that section 14(1)(i) is designed to protect. I agree with the appellant that institutions should be careful in claiming all of the relevant exemptions at the outset. In this particular case, however, given the volume of the records, I accept that some small but significant pieces of information were missed.

[38] And, I agree with the ministry's submission that any potential harm to it is greater than any potential harm to the appellant should I not allow the ministry to claim the additional discretionary exemptions. Accordingly, I will consider the additional claim

of section 14(1)(i) and 19(a) to the records identified by the ministry.

Issue C: Does the mandatory exemption at section 12(1) for Cabinet records apply to the records?

[39] The ministry submits that the following records, in part or in full, are exempt under section 12(1): 2, 8, 9, 12, 16, 25, 27, 97, 120, 123, 124, 138, 142, 158, 233, 245, 256, 273, 285, 290, 293, 297, 305, 310, 312, 313, 315, 316, 319, 322, 328, 329, 332, 335, 338-342 and 360. This information includes emails and attachments. The attachments include power point presentations, draft correspondence and draft Cabinet meeting documents.

[40] Section 12(1) protects certain records relating to meetings of Cabinet or its committees: It reads, in part:

A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

(b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;

(f) draft legislation or regulations.

[41] The Executive Council, which is more commonly known as Cabinet, is a council of ministers of the Crown and is chaired by the Premier of Ontario. Any record that would reveal the substance of deliberations of the Executive Council (Cabinet) or its committees qualifies for exemption under section 12(1), not just the types of records listed in paragraphs (a) to (f).

[42] A record never placed before Cabinet or its committees may also qualify for exemption, if its disclosure would reveal the substance of deliberations of Cabinet or its committees, or would permit the drawing of accurate inferences about the deliberations.

[43] The institution must provide sufficient evidence to show a link between the content of the record and the actual substance of Cabinet deliberations.

Ministry's representations

[44] The ministry submits that all of the records set out above are exempt under the introductory wording of section 12, and that sections 12(1)(b) and (f) also apply to some of the records.

[45] Regarding the application of the introductory wording of section 12, the ministry

submits that by the very nature of part 6 of the appellant's request she is seeking Cabinet records. The ministry notes the appellant specifically requested records that relate to the drafting of proposed amendments to the ISPA – including all drafts, proposals, versions/iterations. The ministry explains that all proposed legislative amendments are submitted to Cabinet and the materials submitted to Cabinet that accompany proposed amendments contain discussions of policy options, recommendations, and/or background explanation and analyses related to the amendments under consideration.

[46] The ministry provides specific submissions on the records claimed exempt which I will address below.

Appellant's representations

[47] The appellant submits that the ministry has provided insufficient evidence to establish that the withheld records were submitted to Cabinet or its committees. The appellant notes that the ministry's representations did not include specific information detailing when each document was submitted and by whom. The appellant also asks that I consider the following:

- Records which reveal the process by which consultation occurred and legislation was prepared are not exempt under the introductory wording of section 12(1).
- There is a distinction between substance of contents contained in a record and the substance of deliberations made by Cabinet or its committees.
- The ministry must provide evidence and argument to establish a link between the content of the record and the actual substance of Cabinet deliberations.
- The ministry must address how a covering email that contains communications between staff members would reveal or permit the drawing of accurate inferences about the substance of Cabinet deliberations.
- Appellant particularly seeks stakeholder's input. In Order PO-3839, it was found that even if stakeholder meeting notes give insight into topics considered, they were not exempt under section 12(1) as they would not permit the accurate inferences of Cabinet deliberations.

[48] The appellant also submits that I particularly scrutinize the records claimed exempt under sections 12(1)(b), (c) and (f).

Analysis and finding

[49] I accept that the records are exempt under section 12(1). As noted above, any record that would reveal the substance of deliberations of the Executive Council or its committee qualifies for exemption under the introductory wording of section 12(1). In

order to meet the requirements of the introductory wording of section 12(1), the institution must provide sufficient evidence to establish a linkage between the content of the record and the actual substance of Cabinet deliberations.⁷ Previous IPC orders have found that:

- *deliberations* refer to discussions conducted with a view towards making a decision;⁸ and
- *substance* generally means more than just the subject of the meeting.⁹

[50] Based on my review of the records and the ministry's representations, I find the introductory wording in section 12(1) applies to exempt records 2, 9, 12, 16, 25, 27, 124, 285, 310, 312, 313, 319, 328, 329, 335, 338 – 342, in full or in part. The detailed nature of the email records, the nature and content of the attachments and the ministry's representations all demonstrate that disclosure of the records would reveal the substance of deliberations of Cabinet or its committees. These records pertain to discussions between ministry staff about various aspects of the *ISPA* amendments and preparing the necessary documents for meetings of the Cabinet or its committees. The records also include discussions about how to respond to questions posed by the minister and/or the various committees.

[51] I also find that sections 12(1)(b) and (f) apply to the records for which the ministry made such claims. For a record to be exempt under section 12(1)(b), a record must include policy options or recommendations, and must have been either submitted to Cabinet or its committees or at least prepared for that purpose. These records remain exempt even after Cabinet makes a decision. For a record to be exempt under section 12(1)(f), the record must consist of draft legislation or regulations.

[52] Having reviewed the records, I make the following findings:

- Record 123 is exempt under section 12(1)(b) because it includes an excerpt from a submission to a committee of Cabinet. The record also includes a discussion of the proposed legislative amendments which I accept would also reveal the substance of Cabinet deliberations.
- Record 142 is exempt under section 12(1)(f) because it contains draft legislative amendments to the *ISPA*. I accept that the discussion in the covering email would disclose the content of the draft legislative amendments so is also exempt.
- Part of record 305 is also exempt under section 12(1)(f) as it would reveal a draft amendment to the *ISPA*.

⁷ Order PO-2320.

⁸ Order M-184.

⁹ Orders M-703 and MO-1344.

[53] The appellant does not dispute that there were proposed amendments to be made to the *ISPA* and that the content of the records may relate to those amendments. The appellant submits that the ministry's representations provide insufficient information and explanation about the records to establish the introductory wording of section 12(1). I agree with the appellant that the ministry's representations do not provide detailed descriptions or summaries of the records, and the deliberations of Cabinet or its committees that would be disclosed if the records are found not to be exempt. However, in the circumstances of this appeal, the records themselves provide sufficient evidence to establish the necessary link with the actual substance of deliberations of Cabinet or its committees. Specifically, I find that many of the records contain emails setting out the dates and times of meetings as well as the documents to be prepared for the meetings or outstanding questions or work that must be completed before the committee meeting.

[54] Finally, I have considered whether the exception in section 12(2)(b) applies to the information I have found exempt under section 12(1). Section 12(2)(b) states:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where,

(b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given.

[55] Under section 12(2)(b), the head of an institution is not required to seek the consent of Cabinet to release a record. However, the head must at least turn their mind to it.¹⁰ Only the Cabinet in respect of which the record was prepared can consent to the disclosure of the record.¹¹

[56] The ministry submits that the records which it withheld under section 12(1) were prepared for a Cabinet which no longer exists because of the change in government in June 2018.

[57] The appellant argues that the ministry's explanation for not seeking Cabinet's consent to disclose under section 12(2)(b) is unacceptable. She submits that many of the access decisions for this batch of records would have been made prior to the change in government.

[58] Based on my review of the parties' representations, I find that the ministry turned its mind to whether it could seek the consent of Cabinet for the disclosure of records it claimed exempt under section 12(1). While I understand the appellant's argument that the ministry could have sought Cabinet's consent before the election, I note that a number of the revised decisions would have been made around the time the election was called or afterwards. I find that section 12(2)(b) does not apply.

¹⁰ Orders P-771, P-1146 and PO-2554.

¹¹ Order PO-2422.

Issue D: Does the discretionary exemption at section 13(1) for advice or recommendations apply to the records?

[59] The ministry submits that section 13(1) applies to exempt records 8, 24, 29, 31, 95, 118, 136, 137, 211, 216, 217, 218, 219, 228, 233, 234, 238, 250, 252, 253, 254, 260, 315, 316, and 328 in full and records 15, 22, 26, 124, 135, 213, 214, 226, 227, 232, 241, 246, 251, 258, 265, 267, 268, 273 and 328 in part. These records are comprised of emails, emails with attachments that consist of draft documents or correspondence.

[60] Section 13(1) states:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

[61] Section 13(1) of the *Act* exempts certain records containing advice or recommendations given to an institution. This exemption aims to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.¹²

[62] Section 13(1) applies if disclosure would “reveal” advice or recommendations, either because the information itself consists of advice or recommendations or the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.

[63] The relevant time for assessing the application of section 13(1) is the point when the public servant or consultant prepared the advice or recommendations. The institution does not have to prove that the public servant or consultant actually communicated the advice or recommendations. Section 13(1) can also apply if there is no evidence of an intention to communicate, since that intention is inherent to the job or policy development, whether by a public servant or consultant.

Representations

[64] The ministry notes that in *John Doe v. Ontario (Finance)*, cited below, the Supreme Court of Canada held that the words advice and recommendations have distinct meanings. Recommendations, which can be expressed or inferred, refer to material that relates to a suggested course of action for the ministry to accept or reject. Advice has a broader meaning than recommendation and is an evaluative analysis of information. Advice includes policy options, which are lists of alternative courses of action, and the view or opinions of a public servant relating to the policy options. The

¹² *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.

record does not need to be communicated in order for section 13(1) to apply.

[65] The ministry notes that the IPC has adopted the analysis from *John Doe* in Orders PO-3470-R, PO-3365, PO-3734 and PO-3496. Citing Reconsideration Order PO-3740-R, the ministry submits that the Supreme Court's decision in *John Doe* has changed how the IPC applies and interprets the section 13(1) exemption. This is set out in paragraphs 63 and 64 above.

[66] The ministry also submits that "advice" should be interpreted to include information on how the institution *should view a matter* and "...the parameters within which a decision should be made."¹³

[67] The ministry makes specific submissions relating to the records which I will reference below in my analysis.

[68] The appellant submits that section 13(1) is not meant to protect advice or recommendations of stakeholders (as opposed to employees or consultants) and asks that I review the records and provide access to any input (including advice, recommendation or written materials) provided by stakeholders.

[69] The appellant also cites the types of records that the IPC has found not to qualify as advice or recommendations and submits that the records claimed exempt by the ministry may include some of this type of information. The appellant submits that records 22, 29, 31, 38, 137, 211, 217, 218, 219, 226, 227, 228, 232, 251, 260, 267, 268 and 328 were mostly refused in their entirety and she does not accept that the entire record contains advice.

[70] The appellant further submits that even where the ministry admits that some of the severed information contains factual information, it is difficult to accept that the facts are always linked with the advice or recommendation such that severance is not possible.

[71] The appellant asks that I consider the application of the exceptions in section 13(2) to the records and information claimed exempt under section 13(1).

[72] Finally, the appellant submits that the ministry claimed a number of exemptions to withhold record 135 and did not substantiate its claim for record 315. The appellant further notes that for records 252 and 253, while the ministry's representations refer to their section 13(1) exemption claim, earlier references in the index note that these two records were not responsive and then released. The appellant submits that the ministry's claims are not consistent which suggests that their claim may be disingenuous.

¹³ *Ibid.*

Analysis and findings

[73] With the exception of records 213, 217, 252, 253, 260, 267, I find that the records (in full and in part) claimed exempt under section 13(1) are exempt under section 13(1).

[74] I will address first the records that I find are not exempt. The ministry describes records 213 and 217 as emails and attachments that provide recommendations and advice regarding the development of the immunization education module. Record 213 contains the summary of a meeting with stakeholders. I accept the appellant's argument that stakeholders are neither employed by the ministry or consultants of the ministry. The information provided by the stakeholders to the ministry does not qualify for exemption under section 13(1). Record 217 was withheld in full by the ministry. While I find below that the attachment qualifies for exemption under section 13(1), I find that the emails do not, because they do not contain information that qualifies as either advice or recommendation for the purposes of section 13(1). Nor do I find that disclosure of the emails would permit the accurate inference of the advice or recommendation withheld in the attachment. The emails relate to administrative matters which were not addressed by the ministry in its representations.

[75] Records 252, 253, 260, and 267 also do not qualify for exemption under section 13(1). The ministry describes records 260 and 267 as emails and attachments that provide recommendations and advice regarding the development of the immunization education module. Based on my review of all of these emails, I find that they do not contain information that is either advice or recommendations for the purposes of section 13(1). I find the ministry's description of the records to be unhelpful in my determination and it is not possible for me to discern from the content of these emails either the advice or recommendation being discussed.

[76] However, I find the remaining records, in full or in part, are exempt under section 13(1). While the ministry's representations were largely unhelpful, my review of the records show that they contain:

- Listed options and questions and discussions of these options.
- Responses to questions with advice on how to proceed or respond to the questions posed.
- Draft documents containing detailed comments with advice and recommendations.

[77] Before finding that the records were exempt under section 13(1), I also considered whether any of the mandatory exceptions in section 13(2) applied to the withheld information. In particular, I considered whether any of the records contained factual information that would not qualify for exemption under section 13(1) and could be severed and disclosed. I find that section 13(2)(a) does not apply to the information

withheld under section 13(1). The factual information is inextricably intertwined with the advice or recommendations such that severance is not reasonably possible. I find that the other exceptions in section 13(2) also do not apply to the withheld information.

[78] Accordingly, I find that the remaining records which the ministry has claimed exempt under section 13(1) are exempt. I will consider the ministry's exercise of discretion below under Issue H.

Issue E: Does the discretionary exemption at section 19(a) apply to the withheld information in the records?

[79] The ministry claims that section 19(a) applies to the withheld information in the following records: 2, 9, 13, 135, 138, 216, 220, 225, 231, 234, 235, 240, 247, 257, 300, 303, 306-312, 316, 317, 318, 320, 321, 328, 331, 332, 335, 355 and 360. Section 19(a) states:

A head may refuse to disclose a record,
that is subject to solicitor-client privilege,

[80] Section 19(a) codifies the common law privilege. The ministry argues that disclosure of the records would reveal solicitor-client communication privileged information.

[81] The rationale for the common law solicitor-client communication privilege is to ensure that a client may freely confide in their lawyer on a legal matter.¹⁴ This privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice.¹⁵ The privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.¹⁶

[82] Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.¹⁷

Representations

[83] The ministry submits that solicitor-client privilege is recognized by the courts "...as close to absolute as possible...As such it...does not involve a balancing of interests

¹⁴ Orders PO-2441, MO-2166 and MO-1925.

¹⁵ *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

¹⁶ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

¹⁷ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

on a case-by-case basis.”¹⁸ The ministry submits that similarly, in *Goodis v. Ontario*,¹⁹ the court found that privileged information may only be disclosed if “absolutely necessary” which is “.as restrictive a test as may be formulated short of an absolute prohibition in every case.” The ministry submits that the disclosure of privileged information in the present appeal does not meet the “absolute necessity” test.

[84] The appellant submits that if the legal advice contained in the records was shared with third parties then the privilege was waived.

Finding

[85] With the exception of the information withheld in record 235, I find that the withheld information in the emails is exempt under section 19(a). The withheld information contains the legal opinion, advice and responses of ministry’s legal counsel in response to questions posed in the emails by ministry staff. I accept that this information is a direct communication between legal counsel and ministry staff for the purposes of providing legal advice. I further find that the staff members on the emails were not third parties such that I would find that the communication was not confidential. There is no evidence establishing a waiver of privilege.

[86] With respect to record 235, I am unable to find that this two page email chain is a confidential communication between legal counsel and its client for the purposes of seeking or providing legal advice. Accordingly, I find it is not exempt under section 19(a) and I will order it disclosed.

[87] I will address the ministry’s exercise of discretion below under Issue H.

Issue F: Does the discretionary exemption at section 14(1)(i) apply to the records?

[88] The ministry claims that certain information in the following records is exempt under section 14(1)(i): 4, 22, 26, 91, 103, 214, 217, 218, 219,221, 223, 224, 228,232, 233, 236, 237, 238, 240, 249, 250, 251, 260, 265, 267, 272, 281, 305, 308, 328 and 329. These records are comprised of emails and attachments. Section 14(1)(i) states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

[89] Parties resisting disclosure under section 14(1)(i) cannot simply assert that the

¹⁸ *R. v. McClure*, 2001 SCC 14.

¹⁹ *Goodis v. Ontario*, 2006 SCC 31.

harms under section 14(1)(i) are obvious based on the record. They must provide *detailed* evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 14 are self-evident and can be proven simply by repeating the description of harms in the *Act*.²⁰

[90] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.²¹ However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.²²

[91] For section 14(1)(i) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required.

Representations

[92] The ministry submits that portions of all the records where section 14(1)(i) is claimed contain teleconference contact information, weblinks to webinars for teleconferences, teleconference access codes and the file paths of where government documents are saved on Ontario government computers and networks.

[93] The ministry submits that disclosure of the severed information could reasonably be expected to jeopardize the security of the ministry's confidential teleconference communication system. The ministry notes that disclosure to the appellant is disclosure to the world and while the appellant may not use the information to access internal, government communications, the appellant is free to disseminate the information to others who might. The ministry argues that this would give unauthorized individuals access to confidential teleconferences among ministry staff, allow them to eavesdrop on conversations and to gain access to confidential documents that were presented during the teleconference. The ministry submits that the security system established to protect the confidentiality of these internal, government communications is "reasonably required", and that the disclosure of the information in these records would effectively undermine that system.

[94] The ministry also submits that the disclosure of the description of the file paths and names of shared drives of where government documents are saved on Ontario government computers and networks would put the ministry's computer systems at risk

²⁰ Orders MO-2363 and PO-2435.

²¹ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

²² *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

because it would assist an authorized individual to infiltrate the ministry's computer system and compromise its security. The ministry submits that the security of its computer system where confidential internal documents are saved is *reasonably required* and disclosure of the withheld information would effectively undermine that system.

[95] The ministry submits that records 217, 218, 219, 226, 227, 228, 246 and 258 consist of recommendations and advice (including draft content) on the draft immunization education module and transcripts. The ministry submits that the immunization exemption video and transcripts are also the subject of appeal PA18-1 where the ministry claimed they were exempt under section 14(1)(i). (I note that the order for appeal PA18-1 has been issued. In Order PO-3972, the adjudicator did not uphold the ministry's exemption claim). The ministry submits that disclosure of record 217 read with other records would reveal the substance of the video and transcripts claimed exempt in that appeal. The ministry asks that I review its representations in that appeal as its additional submissions for the application of section 14(1)(i) in this appeal.

[96] The ministry submits that due to the seriousness of the public health threat that the immunization education procedure attempts to counteract, and the history of the anti-vaccine movement, the information in the videos is an item that requires protection. The ministry states:

Just as the disclosure of the actual video and transcript would endanger the security of immunization education procedure, the disclosure of the recommendations and draft content would do the same.

[97] The appellant submits that the ministry's claim of section 14(1)(i) is unreasonable as section 14 was meant to apply to law enforcement situations. The appellant submits that even if section 14(1)(i) could apply to the current circumstances, a file path is not a system established for protection of items requiring protection, but a way of organizing data. The appellant submits that the ministry has thousands of employees, all of whom probably have access to file-path information. The appellant states:

Further, it is very likely that ministry's teleconferences involved sharing contact information, file paths or web-links with stakeholders that are not ministry employees. If this is the case, I think it is clear that the ministry does not truly consider these teleconference contact information or file paths to be items requiring protection. Sharing this information with stakeholders is akin to a waiver of confidentiality.

Analysis and finding

[98] Based on my review of the parties' submissions and the records, I find that

section 14(1)(i) does not apply to the withheld information.

[99] For the teleconference information, phone numbers and passcodes, withheld in records, I find the ministry has not provided sufficient information that disclosure of this information could reasonably be expected to endanger the security of its teleconference system. The withheld information consists of a telephone number and a passcode. While the telephone number is the same in each instance, the passcode is different. It is unclear to me how the telephone number combined with the passcode that was generated for a specific meeting would give access to the ministry's teleconference system and result in the harm set out in section 14(1)(i). The teleconference meetings for which the telephone number and passcode were generated happened in the past. Presumably, if the appellant or any other individual were to now call the telephone number and input the passcode, they would not be able to access the meeting as the meeting would have already occurred. And the ministry has not established how this information could be used to endanger the ministry's teleconference system. Accordingly, I find that this information is not exempt under section 14(1)(i).

[100] For the same reasons, I also find that the webinar links withheld in the records is not exempt under section 14(1)(i). The webinar links contain an address with a specific code that is different for each meeting. The ministry has not established that disclosing this information for the specific meetings could be expected to endanger the security of its webinar system. These meetings happened in the past and it is not evident to me how the appellant or others could use this information to gain access to meetings or meeting information. I find that section 14(1)(i) does not apply to this information.

[101] The ministry has also claimed section 14(1)(i) to withhold the description of the file paths and names of shared drives of where government documents are stored as disclosure of this information could reasonably be expected to endanger the ministry's computer system. The ministry did not identify specific records where this information is set out and in my review of the records, I could only find two records where file path information was withheld: records 232 and 249. Based on my review of this information, I find that the ministry has not established the harm in section 14(1)(i). I do not accept that disclosure of the file path information (the location of a specific document in the ministry's computer system) could reasonably be expected to compromise the security of the ministry's computer system or allow unauthorized individuals to infiltrate the ministry's computer systems. The ministry has not adequately explained how this information could be used to access the ministry's computer system by an individual who is not a ministry employee.

[102] Finally, I have considered the ministry's claim that disclosure of records 217, 218, 219, 226, 227, 228, 246 and 258 could reasonably be expected to endanger the security of the immunization education procedure. Given my finding on the application of section 13(1) above, I need to only consider whether the remaining email of record 217 is exempt under section 14(1)(i). The remaining information in record 217 consists of an email chain between ministry staff.

[103] The ministry asks that I consider its representations made in appeal PA18-1 and its claim that section 14(1)(i) applies to the video and transcripts which were the subject of the records in the present appeal. As stated above, Appeal PA18-1 was resolved in Order PO-3972. In finding that section 14(1)(i) did not apply to exempt the video and transcripts from disclosure, the adjudicator found that even if he accepted that immunization education session requirement and the method for delivering it constitutes a "procedure established for the protection of items, for which protection is reasonably required," the ministry had not established that disclosing the video and the transcripts could reasonably be expected to endanger the security of this procedure, as required by section 14(1)(i). Given that the records before the adjudicator are different from the email before me, I did not consider the ministry's arguments put forward in appeal PA18-1 nor do I consider the analysis and findings set out in Order PO-3972 to be useful in my consideration of whether the email in record 217 is exempt under section 14(1)(i).

[104] I find that the email in record 217 is not exempt under section 14(1)(i) as the ministry has not established that disclosure of this information could reasonably be expected to endanger a procedure for which protection is reasonably required. As stated above, the information at issue in record 217 consists of an email chain between staff. I find the email chain does not contain information which, if revealed, could result in the harm set out in section 14(1)(i) and I find it is not exempt.

Issue G: Does the discretionary exemption at section 20 apply to the record 217?

[105] The ministry claims that section 20 applies to exempt records 217 from disclosure. Section 20 states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[106] As with the section 14(1)(i) exemption, parties resisting disclosure of a record cannot simply assert that the harms under section 20 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 20 are self-evident and can be proven simply by repeating the description of harms in the *Act*.

[107] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.²³ However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends

²³ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

on the context of the request and the seriousness of the consequences of disclosing the information.²⁴

[108] For section 20 to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to seriously threaten someone's safety or health. A person's subjective fear, or their sincere belief that they could be harmed, is important, but is not enough on its own to establish this exemption.²⁵ The term "individual" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization.²⁶

[109] The ministry submits that disclosure of record 217 could reasonably be expected to seriously threaten the health of individuals. The ministry references its representations relating to section 14(1)(i) and submits that there is a high risk that someone would alter or misrepresent the records to encourage parents in Ontario to seek a vaccination exemption for their child, in accordance with the *ISPA*. The ministry concedes that while disclosure of record 217 would not, in and of itself, pose a health risk to individuals, but submits that there is a risk that disclosure of the record would result in children not receiving necessary vaccines and contracting a disease putting their health at risk.

[110] Based on my review of the portion of record 217 remaining at issue, I find that disclosure of the contents of the email could not reasonably be expected to seriously threaten the safety or health of an individual. Even if I accepted the ministry's argument that disclosure of information relating to the immunization education module (including the video and transcripts) could reasonably result in the harm set out in section 20, I find that the contents of the email in record 217 do not relate to the immunization education module itself. I find the ministry's submissions and the substance of the email in record 217 do not establish the harm in section 20 and I will order it disclosed.

Issue H: Did the ministry properly exercise its discretion in claiming sections 13(1) and 19?

[111] I have found that some of the records at issue are exempt under sections 13(1) and 19(a). Both of these exemptions are discretionary and permit the ministry to disclose information, despite the fact that it could withhold it. The ministry must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[112] In addition, the IPC may find that the institution erred in exercising its discretion

²⁴ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

²⁵ Order PO-2003.

²⁶ Order PO-1817-R.

where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[113] In either case this office may send the matter back to the ministry for an exercise of discretion based on proper considerations.²⁷ This office may not, however, substitute its own discretion for that of the ministry.²⁸

[114] The ministry submits that it properly exercised its discretion taking into account relevant factors in deciding to apply sections 13(1) and 19(a) to withhold certain information and records. The ministry submits that it considered the following factors:

- the importance of ensuring that public servants have a protected space to provide full, free and frank advice
- the ministry consistently treats these types of information as exempt under the relevant exemption
- the ministry limited its exemption claims and disclosed more records than it denied in full
- that disclosing the advice of ministry staff and its consultants would erode the government's ability to formulate and justify its policies.

[115] The appellant submits that the ministry only considered factors favouring non-disclosure of the information and records at issue. In particular, the appellant argues that the ministry applied the exemptions in an overly broad manner rather than in a limited and specific manner as required under the *Act*. The appellant submits that the ministry failed to consider the following:

- a citizen's right to access information created and obtained at taxpayer's expense, and the need to hold government accountable
- public interest in exposing information about the involvement of various stakeholders in the formation of government policies and legislation and in particular when government creates legislation mandating or promoting the use of certain pharmaceutical products that the industry stands to make money from
- a citizen's right to access the legislative amendments to the ISPA as they impact the right to public education and place limits on freedom of religion and

²⁷ Order MO-1573.

²⁸ Section 54(2).

conscience by imposing limits on an individual's right to claim conscientious and religious exemptions

- by the time the access decisions were made by the ministry, the proposed amendments had been made and implemented and the information has now lost some of its sensitive nature.

[116] Based on my review of the factors considered by the ministry, I find that it has properly exercised its discretion. I find that it did not consider irrelevant factors nor did it exercise its discretion in bad faith. While the appellant's considerations explain the reasons why she is seeking access to the record, I find they do not establish that the ministry improperly exercised its discretion to withhold information under sections 13(1) and 19(a).

[117] The appellant's arguments focus to a degree on what she sees as the public interest in disclosure. Section 19(a) is not subject to the public interest override in section 23 of the *Act*, although when an institution exercises its discretion under section 19(a), any public interest in disclosure may be a relevant consideration. I am satisfied that the ministry understood the appellant's arguments and considered them.

[118] As a result, I uphold the ministry's exercise of discretion in withholding the information that I have found exempt under sections 13(1) and 19(a).

[119] Below I will further address the appellant's public interest arguments in the context of the potential application of the public interest override to the records exemption under 13(1).

Issue I: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 13(1) exemption?

[120] The appellant submits that section 23 applies such that section 13(1) does not apply to exempt the records and information from disclosure. I find that section 23 does not apply as there is no compelling public interest in the records at issue.

[121] Section 23 states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21, 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[122] For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, the interest must clearly outweigh the purpose of the exemption.

[123] The word compelling has been defined in previous orders as "rousing strong

interest or attention".²⁹

Representations

[124] The appellant submits that the public interest override at section 23 applies to the information the ministry claims exempt. The appellant submits that she made her access request in order to understand how and why the government chose to propose Bill 87 and to understand the involved costs. The appellant also sought to understand what other options the government considered as well as the nature and extent of stakeholder involvement and input in the process.

[125] The appellant submits that there is a public interest in getting as much information about the topics sought in her request as the legislation affects free and informed consent regarding a medical intervention and the rights to attend school. The appellant submits that there is a compelling public interest in learning to what extent priorities and solutions chosen by the government are affected by stakeholders, who stand to benefit from such policies or legislative amendments. There is a compelling interest, she argues, in learning why the government chose to address this issue and not other pressing public health issues.

[126] The appellant notes that the section 13(1) exemption stems from a concern that the sharing of advice and recommendations with the public would hamper the public servant's ability to give advice freely and submits that this concern is grossly overstated. The appellant states:

In the area of public health, when civil servants are promoting good causes, they should be comfortable with public access to information about solutions they promoted. Government employees should not be shy or uncomfortable about records showing their advice on how to best support public health.

[127] The appellant submits that the public has a strong interest in strengthening the values of accountability, transparency and openness with government. And lastly, the public has a need to ensure that government policies are not unduly affected by stakeholders, who push their own agendas and financial interests.

[128] The ministry submits that there is public interest in not disclosing the information withheld under section 13 because:

- Information in the records could be misrepresented and altered to discourage parents from vaccinating their children, and
- Disclosing the advice of ministry staff and its consultants would erode the government's ability to formulate and justify its policies.

²⁹ Order P-984.

[129] While the ministry acknowledges that there is a general public interest in the broad topic of immunizing children, the ministry submits that there is no compelling public interest in the disclosure of the withheld records.

[130] Finally, the ministry submits that even if the IPC finds that there is a compelling public interest in the disclosure of the records, this interest does not clearly outweigh the purpose of the section 13(1) exemption.

Analysis

[131] In considering whether there is a public interest in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act's* central purpose of shedding light on the operations of government.³⁰ Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.³¹

[132] Based on my review of the parties' representations and the information that I have found to be exempt under section 13(1), I find that there is no compelling public interest in disclosure of that information. The appellant submits that the public has an interest in knowing why the government chose to amend the *ISPA* over focussing on other pressing health matters and also whether the government was unduly influenced to pursue this matter by stakeholders who would benefit from the government's change in policy. While I accept that the government's choice to pursue one policy over another is an accountability issue for the citizens of the province, I do not find this to be a compelling public interest so that section 23 is engaged.

[133] Furthermore, I find that the influence of stakeholders over government policy is not an interest that is addressed by the information that I have found to be exempt under section 23. The withheld information does not relate to stakeholders or stakeholder involvement. Instead, the information relates to advice and recommendations made by ministry staff relating to the *ISPA* amendments.

[134] Even if I were to find a compelling public interest in the disclosure of the records withheld under section 13(1), I agree with the ministry that this public interest would not outweigh the purposes of the section 13(1) exemption. The information withheld by the ministry under section 13(1) relates to comments, advice and recommendations of ministry staff regarding policies and draft documents.

[135] I find that section 23 does not apply in the circumstances of this appeal.

³⁰ Orders P-984 and PO-2607.

³¹ Orders P-984 and PO-2556.

Issue J: Did the ministry conduct a reasonable search for responsive records?

[136] The appellant claims that the ministry should have identified additional responsive records. For the reasons below, I find the ministry's search to be reasonable.

[137] Where the appellant claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24.³² A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.³³

[138] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;³⁴ that is, records that are *reasonably related* to the request.³⁵

[139] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.³⁶

The ministry's representations

[140] The ministry submits that it conducted a reasonable search and its search included multiple holdings including: network shared drives, Microsoft Outlook email folders and physical hard copy files. The ministry notes that due to the batching of the requests, the records were separated into three categories and identified as responsive to either request 00080, 00081 or 00082 (ministry file numbers). The ministry also notes that certain records were identified as responsive to more than one batch of the request.

[141] The ministry provided the search terms used for its electronic searches and noted that where appropriate, it used wildcard searches for its Shared Drive searches in Windows Explorer and partial string searches were used for MS Outlook searches. The ministry submits that the following program areas and staff were searched:

- Disease Prevention Policy and Programs Branch (DPPPB)
- Director, Disease Prevention Policy and Programs Branch
- Senior Program/Policy Advisory, DPPPB

³² Orders P-85, P-221 and PO-1954-I.

³³ Orders M-909, PO-2469 and PO-2592.

³⁴ Orders P-624 and PO-2559.

³⁵ Order PO-2554.

³⁶ Order MO-2246.

- 2 Nurse Consultants (DPPPB)
- Senior Nurse Consultant (DPPPB)
- Assistant Deputy Minister's office
- Manager, Strategy and Operations, Population and Public Health Division (PPHD)

[142] In reply to the appellant's representations set out below, the ministry submits that it interpreted the appellant's request based on the actual wording of her request as it is required to do. The ministry submits that stakeholder records were also included in the scope of the appellant's request.

The appellant's representations

[143] The appellant submits that the ministry failed to provide an affidavit regarding its search and has not met the burden of establishing that it conducted a reasonable search.

[144] The appellant submits that the ministry did not work with her to clarify her request and determined its scope literally and unilaterally. The appellant submits that the search terms set out in the ministry's representations were deficient and she takes issue that ministry staff were not identified by name.

[145] The appellant submits that the basis for her belief that additional responsive records exist is the following:

- The search as conducted had no chance of producing the most responsive records provided by specific stakeholders.
- There are many stakeholders who do advocacy in this area. These include medical associations, such as the Canadian Medical Association, the Ontario Medical Association, Pediatricians Alliance of Ontario, Associations representing pharmacists, nurses and more. There are lobby groups and coalitions (such as Immunize Canada) and associations representing alliances of vaccine vendors or manufacturers. It is common knowledge that these organizations engage in advocacy or lobbying activities. Part of their advocacy would include submission of reports, studies and position papers to government. Such records provided by stakeholders are not likely to be protected by exemptions and yet they were not part of the records released in [this request].

Analysis and finding

[146] Based on my review of the parties' representations, I find that the ministry's search for responsive records was reasonable.

[147] Before I proceed, I note that the appellant asked that I review all the records that the ministry has identified as duplicates in this appeal to ensure that they are actual duplicate records and not new records which the ministry has failed to identify as responsive. I note that the process of reviewing these hundreds of pages of records to compare them to the responsive records in the other appeals added additional, and in my view, unnecessary delay to the resolution of this appeal. The ministry's decision to divide the appellant's request into three batches and deal with each part of the request separately caused and compounded this problem, but I find both parties actions contributed to the duplicate records matter. However, I completed a review of the records identified as duplicates in this appeal and I confirm that the ministry identified the records identified as duplicates were indeed duplicates of records already identified as responsive to the other parts of the appellant's request.

[148] The appellant submits that because the ministry did not provide an affidavit in support of its search, I should find that it has not substantiated that it conducted a reasonable search for responsive records.

[149] In the Notice of Inquiry sent to the ministry, and as is typical for appeals where reasonable search is an issue, the ministry was asked to provide an affidavit. Given that it has not done so, I must decide whether its written submissions are sufficient to satisfy me that it conducted a reasonable search.

[150] In consideration of the evidence that I have been provided in the ministry's representations and the quantity and substance of the identified responsive records, I find that affidavit evidence is not necessary for me to determine the reasonableness of the ministry's search. I have no reasonable basis to disbelieve the ministry's comprehensive representations made in support of its search.

[151] The appellant submits that the ministry's search was deficient because the search terms it used were deficient and also stakeholder records were not included in its search. While I have not set out the search terms used by the ministry and the ones suggested by the appellant, I accept the ministry's explanation that the search terms it set out in its representations was not an exhaustive list. Given the breadth and quantity of the responsive records identified by the ministry, I find the ministry's search terms and additional search terms would be sufficient to identify responsive records. The search terms used by the ministry are not a basis for finding that its search was unreasonable.

[152] The appellant also submits that the ministry's search did not result in certain stakeholder records being identified as responsive. In particular, the appellant is looking for records relating to external stakeholders that would be in the ministry's record holdings relating to the *ISPA* amendments. I do not find the fact that certain external stakeholder records were not identified as responsive to the appellant's request to be evidence that the ministry did not conduct a reasonable search. The appellant's assumptions about external stakeholders and their influence on government policy do

not establish a reasonable basis for the existence of additional responsive records.

[153] Accordingly, I uphold the ministry's search as reasonable.

ORDER:

1. I order the ministry to disclose the information I have found not to be exempt in accordance with the index set out in this order by providing the appellant with a copy of the records by June 2, 2023.
2. I uphold the ministry's decision relating to the remaining records.
3. I uphold the ministry's search as reasonable.
4. In order to verify compliance with Order Provision, I reserve the right to require the ministry to provide me with a copy of records disclosed to the appellant.

Original signed by: _____
Stephanie Haly
Adjudicator

_____ May 2, 2023

APPENDIX

Index of Records

Record Number	Pages at issue	Description	Exemption claimed	Decision
2	63	Email with attachment – Ministry's index describes this as a Cabinet record that contains advice to government and teleconference information	12(1), 13(1), 14(1)(i)	Exempt under 12(1)
3	14	Duplicate of record 87 for batch 2 records		Duplicate
4	8	Email with attachment – teleconference information withheld	14(1)(i)	Not exempt under section 14(1)(i)
5	39	Duplicate of record 89 for batch 2 records		Duplicate
6	24	Duplicate of record 90 for batch 2 records		Duplicate
7	21	Duplicate of record 91 for batch 2 records		Duplicate
8	35	Email and attachment – Ministry describes this as pages 1 – 19 is Cabinet record; pages 20 – 27 is duplicate of batch 1 records; pages 28 -35 is advice to government	12(1), 13(1)	Exempt under section 12(1) and 13(1)
9	35	Email and attachment – Procurement submission	12(1)	Exempt under section 12(1)
10	59	Duplicate of record 94 batch 2 records		Duplicate
11	24	Email – Ministry's index describes this as information forming part of the Auditor General's working papers and outside the control of the ministry	Custody or control/Not responsive	Record is not responsive

12	6	Email and attachment	12(1)	Exempt under section 12(1)
13	69	Email and attachment	12(1), 19(a)	Responsive and exempt under section 19(a)
14	89	Email and attachment – Do not have this record	12(1)	Do not have record. No decision.
15	23	Email and attachment	13(1)	Exempt under section 13(1)
16	19	Email and attachment – Ministry index describes pages 2 – 3 as a Cabinet record; and pages 4 – 19 is a duplicate of record 8 pages 20 – 35	12(1)	Exempt under section 12(1)
18	34	Email and attachment	12(1)	Not responsive
19	31	Email and attachment	12(1)	Not responsive
20	74	Email and attachment	12(1)	Responsive and exempt under section 12(1)
21	96	Email and attachment	12(1)	Not responsive
22	36	Email and attachment (including agenda)	13(1), 14(1)(i)	Exempt under section 13(1); information not exempt under section 14(1)(i)
23	10	Email and attachment (business case)	12(1)	Not responsive
24	37	Email and attachment – Ministry index describes pages 5 – 37 as a duplicate of pages 4 – 36 of record 22		Duplicate
25	23	Email and attachment	12(1)	Exempt under section 12(1)
26	3	Email and attachment – Ministry index describes record as containing advice to government and teleconference information	13(1), 14(1)(i)	Exempt under section 13(1); information not exempt under section 14(1)(i)
27	7	Email and attachment	12(1)	Exempt under section 12(1)

29	43	Email and attachment	13(1)	Exempt under section 13(1)
30	20	Email and attachment (business case)	12(1)	Not responsive
31	19	Email and draft minutes	13(1) and 21(1)	Exempt under section 13(1)
32	59	Email and attachment – Ministry index describes pages 4-59 as a duplicate of record 28 pages 2 - 57		Duplicate
33	40	Email and attachment (briefing note)	12(1)	Exempt under section 12(1)
34	12	Email and attachment	12(1)	Not responsive
35	17	Email and attachment – Ministry index describes pages 3 – 17 as a duplicate of record 1 of the batch 1 records		Duplicate
37	14	Email and attachment – Ministry’s index describes this record as a duplicate of record 120 of batch 2 records		Duplicate
38	64	Email and attachment	13(1)	Responsive and exempt under section 13(1)
39	7	Email and attachment – Ministry’s index describes this record as a duplicate of record 122 of batch 2 records		Duplicate
40	18	Email and attachment – Ministry’s index describes this record as a duplicate of record 123 of batch 2 records		Duplicate
41	7	Email and attachment – Ministry’s index describes this record as information forming part of the Auditor General’s working papers	Custody or control	Not responsive
42	40	Email and attachment	12(1)	Not responsive
43	19	Email and attachment –		Duplicate

		Ministry's index describes this record as a duplicate of record 126 of batch 2 records		
44	25	Email and attachment	12(1), 13(1)	Not responsive
45	11	Email and attachment – Ministry's index describes this record as a duplicate of record 128 of batch 2 records		Duplicate
46	46	Email and attachment – Ministry's index describes this record as a duplicate of record 129 of batch 2 records		Duplicate
47	23	Email and attachment – Ministry's index describes this record as a duplicate of record 130 of batch 2 records		Duplicate
48	33	Email and attachment - Ministry's index describes this record as a duplicate of record 131 of batch 2 records		Duplicate
49	29	Email and attachment - Ministry's index describes this record as a duplicate of record 132 of batch 2 records		Duplicate
50	15	Email and attachment - Ministry's index describes this record as a duplicate of record 133 of batch 2 records		Duplicate
51	11	Email and attachment - Ministry's index describes this record as a duplicate of record 134 of batch 2 records		Duplicate
52	4	Email and attachment - Ministry's index describes this record as a duplicate of record 135 of batch 2		Duplicate

		records		
53	72	Email and attachment - Ministry's index describes this record as a duplicate of record 136 of batch 2 records		Duplicate
54	15	Email and attachment - Ministry's index describes this record as a duplicate of record 137 of batch 2 records		Duplicate
55	80	Email and attachment - Ministry's index describes this record as a duplicate of record 138 of batch 2 records		Duplicate
56	8	Email and attachment - Ministry's index describes this record as a duplicate of record 139 of batch 2 records		Duplicate
57	15	Email and attachment - Ministry's index describes this record as a duplicate of record 140 of batch 2 records		Duplicate
58	5	Email and attachment - Ministry's index describes this record as a duplicate of record 141 of batch 2 records		Duplicate
59	20	Email and attachment - Ministry's index describes this record as a duplicate of record 142 of batch 2 records		Duplicate
60	12	Email and attachment - Ministry's index describes this record as a duplicate of record 143 of batch 2 records		Duplicate
61	30	Email and attachment - Ministry's index describes this record as a duplicate		Duplicate

		of record 144 of batch 2 records		
62	94	Email and attachment - Ministry's index describes this record as a duplicate of record 145 of batch 2 records		Duplicate
63	21	Email and attachment - Ministry's index describes this record as a duplicate of record 146 of batch 2 records		Duplicate
64	99	Email and attachment - Ministry's index describes this record as a duplicate of record 147 of batch 2 records		Duplicate
65	15	Email and attachment - Ministry's index describes this record as a duplicate of record 148 of batch 2 records		Duplicate
66	21	Email and attachment - Ministry's index describes this record as a duplicate of record 149 of batch 2 records		Duplicate
67	21	Email and attachment - Ministry's index describes this record as a duplicate of record 150 of batch 2 records		Duplicate
68	20	Email and attachment - Ministry's index describes this record as a duplicate of record 151 of batch 2 records		Duplicate
69	6	Email and attachment - Ministry's index describes this record as a duplicate of record 152 of batch 2 records		Duplicate
70	9	Email and attachment	12(1), 14(1)(i)	Responsive and exempt under

				section 12(1)
71	22	Email and attachment - Ministry's index describes this record as a duplicate of record 154 of batch 2 records		Duplicate
72	19	Email and attachment - Ministry's index describes this record as a duplicate of record 155 of batch 2 records		Duplicate
73	17	Email and attachment - Ministry's index describes this record as a duplicate of record 156 of batch 2 records		Duplicate
74	30	Email and attachment - Ministry's index describes this record as a duplicate of record 157 of batch 2 records		Duplicate
75	3	Email and attachment - Ministry's index describes this record as a duplicate of record 158 of batch 2 records		Duplicate
77	24	Email and attachment - Ministry's index describes this record as a duplicate of record 160 of batch 2 records		Duplicate
78	8	Email and attachment - Ministry's index describes this record as a duplicate of record 161 of batch 2 records		Duplicate
79	32	Email and attachment - Ministry's index describes this record as a duplicate of record 162 of batch 2 records		Duplicate
80	13	Email and attachment - Ministry's index describes this record as a duplicate		Duplicate

		of record 163 of batch 2 records		
81	47	Email and attachment - Ministry's index describes this record as a duplicate of record 164 of batch 2 records		Duplicate
82	60	Email and attachment - Ministry's index describes this record as a duplicate of record 165 of batch 2 records		Duplicate
83	4	Email and attachment - Ministry's index describes this record as a duplicate of record 166 of batch 2 records		Duplicate
84	10	Email and attachment - Ministry's index describes this record as a duplicate of record 167 of batch 2 records		Duplicate
85	13	Email and attachment - Ministry's index describes this record as a duplicate of record 168 of batch 2 records		Duplicate
86	23	Email and attachment - Ministry's index describes this record as a duplicate of record 169 of batch 2 records		Duplicate
87	8	Email and attachment - Ministry's index describes this record as a duplicate of record 170 of batch 2 records		Duplicate
88	2	Email	13(1)	Responsive and exempt under section 13(1)
89	21	Email and attachment - Ministry's index describes this record as a duplicate of record 172 of batch 2		Duplicate

		records		
90	22	Email and attachment - Ministry's index describes this record as a duplicate of record 173 of batch 2 records		Duplicate
91	5	Email	14(1)(i)	Not exempt
92	2	Email and attachment	19(a)	Exempt
93	29	Email and attachment - Ministry's index describes this record as a duplicate of record 176 of batch 2 records		Duplicate
94	16	Email and attachment - Ministry's index describes this record as a duplicate of record 177 of batch 2 records		
95	13	Email and attachment	13(1), 19(a)	Exempt under section 13(1)
96	15	Email and attachment - Ministry's index describes this record as a duplicate of record 179 of batch 2 records		Duplicate
97	2	Email	12(1)	Exempt
98	4	Email	13(1), 17(1)	Responsive and exempt under section 13(1)
99	67	Email and attachment – Ministry's index states: final version available at https://www.publichealthontario.ca/en/erespository/annual%20business%20plan%202016-19.pdf	22(a)	
100	19	Email and attachment - Ministry's index describes this record as a duplicate of record 183 of batch 2 records		Duplicate
101	11	Email and attachment - Ministry's index describes		Duplicate

		this record as a duplicate of record 184 of batch 2 records		
102	7	Email and attachment - Ministry's index describes this record as a duplicate of record 185 of batch 2 records		Duplicate
103	15	Email and attachment	14(1)(i)	Not exempt
104	11	Email and attachment - Ministry's index describes this record as a duplicate of record 187 of batch 2 records		Duplicate
105	43	Email and attachment - Ministry's index describes this record as a duplicate of record 188 of batch 2 records		Duplicate
106	3	Email and attachment - Ministry's index describes this record as a duplicate of record 189 of batch 2 records		Duplicate
107	25	Email and attachment - Ministry's index describes this record as a duplicate of record 190 of batch 2 records		Duplicate
108	13	Email and attachment - Ministry's index describes this record as a duplicate of record 191 of batch 2 records		Duplicate
109	14	Email and attachment - Ministry's index describes this record as a duplicate of record 192 of batch 2 records		Duplicate
110	9	Email and attachment - Ministry's index describes this record as a duplicate of record 193 of batch 2 records		Duplicate

111	24	Email and attachment - Ministry's index describes this record as a duplicate of record 194 of batch 2 records		Duplicate
112	236	Email and attachment - Ministry's index describes this record as a duplicate of record 195 of batch 2 records		Duplicate
113	3	Email and attachment - Ministry's index describes this record as a duplicate of record 196 of batch 2 records		Duplicate
114	34	Email – Ministry's index describes with information as information forming part of the Auditor General's working papers that are outside the control of the ministry	Custody or control	Not responsive
115	14	Email and attachment - Ministry's index describes this record as a duplicate of record 198 of batch 2 records		Duplicate
116	15	Email and attachment - Ministry's index describes this record as a duplicate of record 199 of batch 2 records		Duplicate
117	7	Email and attachment - Ministry's index describes this record as a duplicate of record 200 of batch 2 records		Duplicate
118	5	Email	13(1)	Exempt under section 13(1)
119	3	Email and attachment - Ministry's index describes this record as a duplicate of record 202 of batch 2 records		Duplicate

120	6	Email and attachment	12(1)	Exempt under section 12(1)
121	18	Email and attachment - Ministry's index describes this record as a duplicate of record 204 of batch 2 records		Duplicate
122	8	Email and attachment - Ministry's index describes this record as a duplicate of record 205 of batch 2 records		Duplicate
123	2	Email	12(1)	Exempt under section 12(1)
124	33	Email and attachment - Ministry index describes record as containing advice to government on page 16 and pages 17-33 is a cabinet record	12(1), 13(1)	Exempt under section 13(1); and exempt under section 12(1)
125	8	Email and attachment - Ministry's index describes this record as a duplicate of record 208 of batch 2 records		Duplicate
126	2	Email - Ministry's index describes this record as a duplicate of record 209 of batch 2 records		Duplicate
127	7	Email and attachment - Ministry's index describes this record as a duplicate of record 210 of batch 2 records		Duplicate
128	7	Email and attachment - Ministry's index describes this record as a duplicate of record 211 of batch 2 records		Duplicate
129	2	Email - Ministry's index describes this record as a duplicate of record 212 of batch 2 records		Duplicate
130	89	Email and attachment -		Duplicate

		Ministry's index describes this record as a duplicate of record 213 of batch 2 records		
131	9	Email and attachment - Ministry's index describes this record as a duplicate of record 214 of batch 2 records		Duplicate
132	7	Email and attachment - Ministry's index describes this record as a duplicate of record 215 of batch 2 records		Duplicate
133	21	Email and attachment - Ministry's index describes this record as a duplicate of record 216 of batch 2 records		Duplicate
134	3	Email and attachment - Ministry's index describes this record as a duplicate of record 217 of batch 2 records		Duplicate
135	34	Email and attachment – Don't have complete record	13(1) and 14(1)(i)	Don't have complete record. No decision.
136	3	Email	13(1)	Exempt under section 13(1)
137	20	Email and attachment	13(1)	Exempt under section 13(1)
138	20	Email and attachment	12(1), 19(a)	Exempt under section 19(a)
139	4	Email - Ministry's index describes this record as a duplicate of record 222 of batch 2 records		Duplicate
140	21	Email and attachment - Ministry's index describes this record as a duplicate of record 223 of batch 2 records		Duplicate
141	3	Email - Ministry's index		Duplicate

		describes this record as a duplicate of record 222 (and 139) of batch 2 records		
142	12	Email and attachment	12(1)	Exempt under section 12(1).
143	29	Email and attachment - Ministry's index describes this record as a duplicate of record 226 of batch 2 records		Duplicate
144	30	Email and attachment - Ministry's index describes this record as a duplicate of record 227 of batch 2 records		Duplicate
145	12	Email and attachment	12(1)	Not Responsive
146	1	Email - Ministry's index describes this record as a duplicate of record 229 of batch 2 records		Duplicate
147	6	Email and attachment - Ministry's index describes this record as a duplicate of record 230 of batch 2 records		Duplicate
148	71	Email and attachment	13(1)	Not responsive
149	7	Email and attachment – need a copy of this record	18(1)(e), 19(a)	Do not have record. No decision.
150	4	Email and attachment - Ministry's index describes this record as a duplicate of record 233 of batch 2 records		Duplicate
151	7	Email and attachment	18(1)	Not responsive
152	94	Email and attachment – Ministry's index states – House book notes not responsive to the request in its entirety (pages 5-20, 35-94)	18(1)	Not responvie
153	6	Email and attachment - Ministry's index describes		Duplicate

		this record as a duplicate of record 236 of batch 2 records		
154	5	Email and attachment - Ministry's index describes this record as a duplicate of record 237 of batch 2 records		Duplicate
155	7	Email and attachment - Ministry's index describes this record as a duplicate of record 238 of batch 2 records		Duplicate
156	20	Email and attachment - Ministry's index describes this record as a duplicate of record 239 of batch 2 records		Duplicate
157	2	Email and attachment	21(1)	
158	5	Email and attachment	12(1)	Exempt under section 12(1)
159	28	Email and attachment	12(1)	Not responsive
160	35	Email and attachment - Ministry's index describes this record as a duplicate of record 243 of batch 2 records		Duplicate
161	2	Email and attachment - Ministry's index describes this record as a duplicate of record 244 of batch 2 records		Duplicate
162	11	Email and attachment - Ministry's index describes this record as a duplicate of record 245 of batch 2 records		Duplicate
163	3	Email - Ministry's index describes this record as a duplicate of record 246 of batch 2 records		Duplicate
164	19	Email and attachment - Do not have full record	12(1)	Do not have record. No decision.

165	4	Email and attachment - Ministry's index describes this record as a duplicate of record 248 of batch 2 records		Duplicate
166	2	Email - Ministry's index describes this record as a duplicate of record 249 of batch 2 records		Duplicate
167	2	Email and attachment - Ministry's index describes this record as a duplicate of record 250 of batch 2 records		Duplicate
168	3	Email and attachment - Ministry's index describes this record as a duplicate of record 251 of batch 2 records		Duplicate
170	4	Email - Ministry's index describes this record as a duplicate of record 253 of batch 2 records		Duplicate
171	37	Email and attachment - Ministry's index describes this record as a duplicate of record 254 of batch 2 records		Duplicate
172	21	Email and attachment - Ministry's index describes this record as a duplicate of record 255 of batch 2 records		Duplicate
173	15	Email and attachment - Ministry's index describes this record as a duplicate of record 256 of batch 2 records		Duplicate
174	20	Email and attachment - Ministry's index describes this record as a duplicate of record 257 of batch 2 records		Duplicate
175	2	Email	12(1), 19(a)	Responsive.

				Exempt under section 12(1).
176	18	Email and attachment - Ministry's index describes this record as a duplicate of record 259 of batch 2 records		Duplicate
177	53	Email and attachment - Ministry's index describes this record as a duplicate of record 260 of batch 2 records		Duplicate
178	12	Email and attachment - Ministry's index describes this record as a duplicate of record 145		Duplicate
179	1	Email and attachment - Ministry's index describes this record as a duplicate of record 146		Duplicate
180	6	Email and attachment - Ministry's index describes this record as a duplicate of record 147		Duplicate
181	71	Email and attachment - Ministry's index describes this record as a duplicate of record 148		Duplicate
182	7	Email and attachment - Ministry's index describes this record as a duplicate of record 149		Duplicate
183	4	Email and attachment - Ministry's index describes this record as a duplicate of record 150		Duplicate
184	7	Email and attachment - Ministry's index describes this record as a duplicate of record 151		Duplicate
185	94	Email and attachment - Ministry's index describes this record as a duplicate of record 152		Duplicate

186	6	Email and attachment - Ministry's index describes this record as a duplicate of record 153		Duplicate
187	5	Email and attachment - Ministry's index describes this record as a duplicate of record 154		Duplicate
188	7	Email and attachment - Ministry's index describes this record as a duplicate of record 155		Duplicate
189	20	Email and attachment - Ministry's index describes this record as a duplicate of record 156		Duplicate
190	2	Email and attachment - Ministry's index describes this record as a duplicate of record 157		Duplicate
191	5	Email and attachment - Ministry's index describes this record as a duplicate of record 158		Duplicate
192	28	Email and attachment - Ministry's index describes this record as a duplicate of record 159		Duplicate
193	35	Email and attachment - Ministry's index describes this record as a duplicate of record 160		Duplicate
194	2	Email and attachment - Ministry's index describes this record as a duplicate of record 161		Duplicate
195	11	Email and attachment - Ministry's index describes this record as a duplicate of record 162		Duplicate
196	3	Email and attachment - Ministry's index describes this record as a duplicate of record 163		Duplicate

197	19	Email and attachment - Ministry's index describes this record as a duplicate of record 164		Duplicate
198	4	Email and attachment - Ministry's index describes this record as a duplicate of record 165		Duplicate
199	2	Email and attachment - Ministry's index describes this record as a duplicate of record 166		Duplicate
200	2	Email and attachment - Ministry's index describes this record as a duplicate of record 167		Duplicate
201	3	Email and attachment - Ministry's index describes this record as a duplicate of record 168		Duplicate
202	2	Email and attachment - Ministry's index describes this record as a duplicate of record 169		Duplicate
203	4	Email and attachment - Ministry's index describes this record as a duplicate of record 170		Duplicate
204	37	Email and attachment - Ministry's index describes this record as a duplicate of record 171		Duplicate
205	21	Email and attachment - Ministry's index describes this record as a duplicate of record 172		Duplicate
206	15	Email and attachment - Ministry's index describes this record as a duplicate of record 173		Duplicate
207	20	Email and attachment - Ministry's index describes this record as a duplicate of record 174		Duplicate

208	2	Email - Ministry's index describes this record as a duplicate of record 175		Duplicate
209	18	Email and attachment - Ministry's index describes this record as a duplicate of record 176		Duplicate
210	53	Email and attachment - Ministry's index describes this record as a duplicate of record 177 [Don't have most of this record]		Do not have record. No decision.
211	35	Email and attachment	13(1), 20	Exempt under section 13(1).
212	1	Email – Do not have other page of this record	13(1)	Do not have complete record. No decision.
213	4	Email and attachment	13(1)	Exempt under section 13(1).
214	6	Email and attachment	13(1), 14(1)(i)	Exempt under section 13(1).
215	17	Email and attachment	14(1)(i)	Not responsive
216	4	Email	13(1), 19(a)	Exempt under section 13(1).
217	44	Email and attachment	13(1), 14(1)(i), 20	Exempt under section 13(1), in part.
218	42	Email and attachment	13(1), 20	Exempt under section 13(1).
219	69	Email and attachment	13(1), 20	Exempt under section 13(1).
220	2	Email	19(a)	
221	3	Email – teleconference number withheld	14(1)(i)	Information not exempt under section 14(1)(i).
222	2	Email – teleconference number withheld	14(1)(i)	Information not exempt under section 14(1)(i).
223	3	Email – teleconference number withheld	14(1)(i)	Information not exempt under section 14(1)(i).
224	3	Email – teleconference number withheld	14(1)(i)	Information not exempt under

				section 14(1)(i).
225	4	Email	19(a)	
226	41	Email and attachment (pages 2 – 41 danger to safety or health and advice to government)	13(1), 20	Exempt under section 13(1).
227	41	Email and attachment (pages 2 – 41 danger to safety or health and advice to government)	13(1), 20	Exempt under section 13(1).
228	42	Email and attachment	13(1), 20	Exempt under section 13(1).
230	4	Email	19(a)	Do not have record. No decision.
231	6	Email	19(a)	
232	44	Email and attachment (pages 7 – 40 contains teleconference information, advice to government and danger to safety or health)	13(1), 14(1)(i), 20	Information exempt under section 13(1).
233	7	Email	12(1), 13(1), 14(1)(i)	Information exempt under sections 12(1) and 13(1).
234	1	Email	13(1), 19(a)	Information exempt under section 19(a).
235	2	Email	19(a)	Information, not exempt under section 19(a).
236	2	Email – teleconference information withheld	14(1)(i)	Information not exempt under section 14(1)(i).
237	2	Email – teleconference information withheld	14(1)(i)	Information not exempt under section 14(1)(i).
238	9	Email	13(1), 14(1)(i)	Information exempt under section 13(1). Information not

				exempt under section 14(1)(i).
240	4	Email	19(a), 14(1)(i)	Information exempt under section 19(a). Information not exempt under section 14(1)(i).
241	2	Email	13(1)	Information exempt under section 13(1).
245	2	Email	12(1)	Information exempt under section 12(1).
246	6	Email and attachment	13(1), 20	Information exempt under section 13(1).
247	11	Email and attachment	19(a)	Information exempt under section 19(a)
248	10	Email and attachment – duplicate of 247		Duplicate
249	20	Email	14(1)(i), 17(1)	Information is not exempt under section 14(1)(i). No decision on section 17(1).
250	5	Email	13(1), 14(1)(i)	Information exempt under section 13(1). Information not exempt under section 14(1)(i).
251	13	Email and attachment – pages 4 – 13 contains advice to government and danger to safety or health, contains teleconference information	13(1), 14(1)(i), 20	Information exempt under section 13(1). Information not exempt under section 14(1)(i).
254	1	Email	13(1)	Information

				exempt under section 13(1).
255	1	Email	17(1)(a)	Not responsive
256	2	Email	12(1)	Information exempt under section 12(1).
257	10	Email and attachment	19(a)	Information exempt under section 19(a).
258	5	Email and attachment	13(1), 20	Information exempt under section 13(1).
260	10	Email and attachment	13(1), 14(1)(i)	Information not exempt under either section 13(1) or 14(1)(i).
264	2	Email - Duplicate of record 284		Duplicate
265	6	Email and attachment	13(1), 14(1)(i), 20	Information exempt under section 13(1) but not exempt under section 14(1)(i).
266	2	Email – Duplicate of record 284		Duplicate
267	10	Email	13(1), 14(1)(i)	Information not exempt under section 13(1) or 14(1)(i).
268	11	Email and attachment – includes advice to government on pages 6 – 11	13(1)	Information exempt under section 13(1).
269	3	Email – Duplicate of pages 4 -6 of record 284		Duplicate
272	6	Email and attachment – teleconference information withheld	14(1)(i)	Information not exempt under section 14(1)(i).
273	3	Email	12(1), 13(1), 21(1)	Information exempt under sections 12(1) and 13(1).

275	5	Email – Duplicate of record 284		Duplicate
278	11	Email and attachment – Duplicate of record 268		Duplicate
280	2	Email – Duplicate of record 273		Duplicate
281	1	Email – teleconference information withheld	14(1)(i)	Information not exempt under section 14(1)(i)
285	4	Email and attachment	12(1)	Information exempt under section 12(1).
288	8	Email and attachment – Duplicate of record 287		Duplicate
290	4	Email and attachment	12(1)	Information exempt under section 12(1).
293	5	Email – Cabinet record pages 3 – 5	12(1)	Do not have pages 3 – 5. No decision on application of section 12(1).
295	5	Email – Duplicate of record 293		Duplicate
297	6	Email and attachment – Cabinet record pages 4 – 6	12(1)	Information exempt under section 12(1).
299	3	Email	17(1)	Not responsive
300	2	Email	19(a)	Information exempt under section 19(a).
302	2	Email – Duplicate of record 301 which was disclosed		Duplicate
303	2	Email	19(a)	Information exempt under section 19(a).
305	4	Email	12(1), 14(1)(i)	Information exempt under section 12(1) but not exempt under section 14(1)(i).
306	2	Email	19(a)	Information

				exempt under section 19(a).
307	6	Email	19(a)	Information exempt under section 19(a).
308	1	Email	14(1)(i), 19(a), 21(1)	Information exempt under section 19(a) but not exempt under section 14(1)(i).
309	11	Emails	19(a)	Information exempt under section 19(a).
310	5	Emails	12(1), 19(a)	Information exempt under section 12(1) and 19(a).
311	1	Email	19(a)	Information exempt under section 19(a).
312	2	Email	12(1), 19(a)	Information exempt under section 12(1) and 19(a).
313	2	Email and attachment	12(1)	Information exempt under section 12(1).
315	2	Email	12(1), 13(1)	Information exempt under sections 12(1) and 13(1).
316	10	Emails	12(1), 13(1)	Information exempt under sections 12(1) and 13(1).
317	2	Email	19(a)	Exempt under section 19(a).
318	14	Emails	19(a)	Exempt under section 19(a).
319	2	Email and attachment	12(1)	Information exempt under section 12(1).
320	2	Email	19(a)	Exempt under

				section 19(a).
321	4	Email and attachment	19(a)	Exempt under section 19(a).
322	14	Email and attachment	12(1), 19(a)	Exempt under section 12(1).
323	6	Email	19(a)	Exempt under section 19(a).
325	4	Email	NR	Not responsive
326	5	Email	12(1), NR	Not responsive
327	1	Email – Duplicate of record 259		Duplicate
328	37	Email and attachment	12(1)(a), 13(1), 14(1)(i)	Information is exempt under sections 12(1) and 13(1).
329	20	Email and attachment	12(1), 14(1)(i)	Information exempt under section 12(1).
330	7	Email and attachment – Duplicate of record 149		Duplicate
331	2	Email	19(a)	Information exempt under section 19(a).
332	10	Email and attachment	12(1), 19(a)	Information exempt under sections 12(1) and 19(a).
335	10	Email (only have 2 pages)	12(1)	Information exempt under section 12(1).
336	14	Email and attachment	19(a)	Information exempt under section 19(a).
338	8	Email and attachment	12(1)	Information exempt under section 12(1).
339	9	Email and attachment	12(1)	Information exempt under section 12(1).
340	8	Email and attachment	12(1)	Information exempt under section 12(1).
341	9	Email and attachment	12(1)	Information exempt under

				section 12(1).
342	8	Email and attachment	12(1)	Information exempt under section 12(1).
343	12	Email and attachment	12(1)	Not responsive
348	2	Email – Duplicate of record 350		Duplicate
351	1	Email and attachment – Duplicate of record 355		Duplicate
352	3	Email – Duplicate of record 355		Duplicate
353	2	Email – Duplicate of record 355		Duplicate
354	2	Email – Duplicate of record 355		Duplicate
355	4	Email	19(a)	Information exempt under section 19(a).
356	7	House book note – Duplicate of record 7 Batch 1		Duplicate
357	8	Do not have record – Duplicate of record 1 Batch 1		Do not have record. No decision.
358	3	Do not have record – Duplicate of record 4 Batch 1		Do not have record. No decision.
359	4	Do not have record – Duplicate of record 6 Batch 1		Do not have record. No decision.
360	6	Email and attachment	12(1), 19(a)	Information exempt under sections 12(1) and 19(a).
361	1	Email – Duplicate of record 360		Duplicate